IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

Present:
The Hon'ble Justice V. M. Velumani
&
The Hon'ble Justice Rai Chattopadhyay

MAT 989 of 2023
With
CAN 1 of 2023

Board of Trustees for Syama Prasad Mookherjee Port & Anr.
Vs.
Union of India & Ors.

For the Appellants	: Mr. Kishore Dutta, : Mr. Ashok Kr. Jena.
For the Respondent Nos. 3-15	: Dr. Madhusudan Saha Roy, : Mr. Moloy Dhar, : Mr. P.K. Ghosh.
For the Respondent No. 16	: Mr. Puspal Chakraborty, : M. A. Jena.

Hearing concluded on: **17/08/2023**

Judgment on: 13/10/2023

Rai Chattopadhyay, J.

1. The unsuccessful writ petitioner, in WPA No. 10637 of 2020, has filed this appeal to challenge the judgment of the Hon'ble Single Judge dated 27.3.2023, in the said writ petition.

2. The issue relates to the long standing demand of the present respondents No. 3 to 16, for their regularisation with the appellant. The previous two rounds of bouts between the parties before this Court were culminated vide this Court's order, into consideration by the Central Industrial Tribunal, in an industrial dispute raised before it for adjudication, of the issue of regularisation of the said respondents. The Tribunal has passed an award on 19.12.2019, directing the present appellant to regularise the said respondents. Being aggrieved thereby, the present appellant/writ petitioner had preferred the writ petition as above, to challenge the said award. However being not successful also in the said writ petition before the Hon'ble Single Judge, who has eventually upheld the decision of the Tribunal, the appellant has filed the instant appeal. In this appeal the appellant has virtually challenged both the judgment of the Hon'ble Single Judge as well as that of the Tribunal.

3. The respondents No. 3 to 16 have been employees in the Kolkata Port Trust Officer's Club ['club' hereinafter], who were appointed between the years 1989 and 1994. Since thereafter they have been working continuously in the said 'club' and guesthouse. Kolkata Port Trust, Haldia Dock Complex [KoPT] is a statutory body under the Major Port Trusts Act, 1963. The 'club' was set up in the year 1987, to incorporate club as well as the guesthouse. This was set up on the land of KoPT, having its own structure with interiors and fixtures. The membership of the 'club' and guesthouse would extend to the officers of the KoPT including retired officers and other similarly ranked persons from central or state government and public sector undertakings. Such membership would not be coterminous with the employment with KoPT. The sources of fund to run the club would be generated through subscription of members and

also grants received from KoPT. Prolonged and continuous service of the said respondents, in the said 'club' and guest house has prompted them to raise demand for regularisation of service with the appellant body corporate, to which the Tribunal as well as the Hon'ble Single Bench in their judgments respectively, have given a nod, through their respective judgments.

4. Mr. Dutta Ld. Senior Counsel, who is representing the appellant has firstly contended that the statutory body corporate which he represents is required to function in due adherence with the provisions of statute to which its origin is related and also governed by the regulations thereof, that is, regulations of 1985. He says that the governing regulations of the appellant, of 1985 include the Central government rules for regular appointments. He informs the Court that appointments are being made in terms of the said regulations by way of promotion, transfer of employees or direct recruitment. Mr. Dutta says that excepting the modes as above, the governing regulations of the appellant does not provide any other mode of appointment. He says that the appellant being the statutory body corporate is duty bound to follow the prescribed regulations for the purpose of appointment and is only powerless to provide the same in any manner excepting that has been promulgated in the said regulations. He further specifies that under the statute as well as the regulations, the claim of the said respondents for regularisation of their service with the appellant cannot be maintained and also that pursuant to the same any such regularisation would only be illegal. Mr. Dutta's first submission is that in both of the judgements as assailed in this appeal, gross error occurred due to non-consideration of this aspect, which actually touches the very root of the matter.

5. Thereafter, Ld. Senior Counsel turns to a verdict of the Hon'ble Supreme Court, that is of ***Balwant Rai Saluja & Another vs AIR India Limited & Others reported in (2014) 9 SCC 407***, to say that there are specific guidelines provided therein by the said Court, to be followed, when a question of existence of employer-employee relationship between the parties falls for consideration of the Court. For the benefit of discussion, let the relevant portion of the said judgment be extracted herein below :

> ***"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:***
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> ***(i) who appoints the workers;***
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> ***(ii) who pays the salary/remuneration;***
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> ***(iii) who has the authority to dismiss;***
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> ***(iv) who can take disciplinary action;***
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> ***(v) whether there is continuity of service; and***
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> ***(vi) extent of control and supervision i.e. whether there exists complete control and supervision.***
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> ***As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case, International Airport Authority of India case and Nalco case."***

6. He then refers to the relevant documents to submit that neither of the said guidelines as provided in ***Saluja's*** *case* (supra) has been fulfilled in the present case. According to him both the Tribunal as well as the Hon'ble Single Judge has failed to consider the same. He says that the same has rendered the impugned judgment to be contrary to the law as it is settled now. Mr. Dutta has elaborated that neither the present respondents can be considered to be governed under the statute or regulations applicable in case of employees in the rolls of the present appellant, nor any other factor like the appellant remitting additional grant to run the 'club' or an officer of the appellant to administer and manage businesses of the 'club' in his ex officio capacity, and as a mere informal constituent of that body, could be the justifiable basis upon which the present

respondents could have been bestowed with the status of employees of the appellant itself. According to Ld. Senior Counsel, a concept of 'principal employer', in case of his client, has been brought in only erroneously, insofar as in case of the present respondents there is no intermediary functioning namely, a contractor. This is an erroneous application of law, he says. It has further been stated that the service conditions of the present respondents would not have any statutory enforceability as the same do not flow from any statute. The 'club' is only an informal body and cannot be equated with the statutory body governed by specific regulations. That, the appellant would have obligation towards its employees within the scope of the statute itself and unless it had any such statutory duty and obligation towards the present respondents, which are not there, they cannot be legally obligated to extend the benefit to the present respondents, as claimed.

7. The other judgement referred to by Mr. Dutta is ***Employers in relation to the management of Reserve Bank of India vs. Workmen*** **reported in** ***(1996) 3 SCC 267***. There the Supreme Court was dealing with the issue of regularisation or not of the non-statutory canteen workers. One previous judgment of the Court in *MMR Khan vs. Union of India* reported in *1990 Supp SCC 191)*, has been distinguished in this case. Mr. Dutta has shown that the ratio of the decision has been that with limited role and functioning with regard to the affairs of the committee, which runs the canteen, the appellant therein was not held to have any control on the employees engaged by the committee, by way of managing their day to day affair or taking any disciplinary action. The Court found the only role played by the appellant in running the canteen was to nominate the three members to the committee. The Court held that in absence of any obligation,

statutory or otherwise regarding running of a canteen, the workers thereof would not be considered to be regularized in service with the appellant therein.

8. ***S.C Chandra & Ors. vs. State of Jharkhand & Ors. reported in (2007) 8 SCC 279***, is the other Supreme Court judgment which has been relied on by the appellants here. The matter related to the government recognized school started by the subsidiary company of Hindustan Copper Limited (HCL). The school was initiated getting financial assistance from the management of HCL, though subsequently there was financial crunch. The Court firstly held that though the management of HCL was giving financial aid to the school and most of its employees, were in the management committee of the school but by that it could not be construed that the school was run by the management of HCL. By referring to ratio of this decision of the Supreme Court, Mr. Dutta has also argued that there is no parity or identity of work which the present respondents as the employees of the 'club' and the employees of the appellant Board, are discharging. He says that in the said judgment the Court has negated that there should be any equality in pay to the persons who are not discharging equal or identical works.

9. He has referred to the judgment in ***National Aluminium Company Limited & Ors. vs. Ananta Kishore Rout & Ors. reported in (2014) 6 SCC 756*** also. School was set up by NALCO which also took care of the financial deficits if any of the school. Officer of NALCO were nominated to the management committee of the schools. NALCO provided necessary infrastructure, staff quarters at disposal at school and also accorded other benefits like recreation 'club' facilities. On the other hand the management committee recruited staff and used to take decision regarding

their service condition. The Court held that all these factors, as mentioned above, could not make NALCO an employer of the staff of the school. The Court held further that in order to determine the existence of employer-employee relationship, the correct approach would be to consider as whether there is complete control and supervision of NALCO, over the school, or not.

10. According to Mr. Dutta, only complete control and supervision of the appellant would justify the claim of regularisation of the respondent nos. 3 to 16 in service with the appellant. He says that the materials available in this case through the evidence on record placed before the Tribunal, would not show that any parameter upon which the extent of control and supervision should have been assessed, in terms of the settled law as discussed in the cases, as mentioned above, have not been fulfilled in the present case. According to him neither the day to day affairs of the respondents are within the domain of the appellant, nor the appellant as the regulatory or disciplinary authority of the respondents and it only exercises 'remote control' with respect to the affairs of the respondent nos. 3 to 16. Hence law would not allow them to be a part of appellant's work force, whose entire service with the appellant is governed under the provisions of Major Port Trusts Act, 1963. Lastly, Mr. Dutta has urged that the appeal may be allowed by setting aside the impugned judgment of the Hon'ble single bench dated 27.3.2023.

11. There has been strong objection on the part of the concerned respondent's as to the submissions and prayer of the appellant. The arguments made may be jotted down by saying that the respondents are governed under the bylaws framed by the

appellant for the purpose. Posts were created by the appellant to create manpower for running the 'club'. Accordingly the arguments of the appellant that the respondents cannot legally enforce their claim of regularisation is only unfounded. Again that, the 'club' is run by the subscription of the members as well as the additional grant paid by the appellant, which is a permanent and regular feature unlike what has been submitted on behalf of the appellant that the grant is extended only upon requisition made by the 'club'. That, the salary of the respondents are paid by the appellant through the accounts of the 'club'. That, the management, policy-making and execution of the policies including financial decisions are bestowed with the appellant only to render the 'club' as a protuberance of the appellant, directly controlled by it. It has been submitted that all these aspects which are essentially the questions of fact has been duly considered by the Tribunal, on the basis of the evidence produced before it and has come to a finding which is just fair and proper. It has been further submitted that, the Hon'ble Single Bench has considered the award of the Tribunal, in its right perspective and by a well reasoned judgment, upheld the said award. Therefore, according to the respondents, there would be no cogent ground for this appeal Court to interfere into the said impugned judgment of the Hon'ble Single Judge.

12. ***Saluja's*** case (Supra) has also been referred by the respondents too. There in unison with what has been submitted by the appellant that the criteria as mentioned in paragraph 65 of ***Saluja's*** judgment (Supra) (mentioned at page no. 4 of this judgment), are the tests to ascertain existence of any relationship of employer and employee between the two parties.

13. The respondents have also mentioned the case of ***Indian Overseas Bank vs. I.O.B Staff Canteen Workers' Union & Anr. reported in (2000) 4 SCC 245***. The same has been referred, to emphasise that ***"21. ..... if on the facts proved, the findings recorded by the Tribunal are justified and could not be considered to be based upon "no evidence", there is no justification for the High Court in exercising writ jurisdiction to interfere with the same. The promoters of the canteen being permanent employees in the service of the Bank, were permitted to run the canteen, by merely being in control of the day-to-day affairs of the canteen, the Bank cannot be absolved of its liabilities when it was really using the canteen management as its instrumentality and agent. The cloak apart, the "voice definitely is that of Jacobs". Consequently, we could neither find any error of law or other vitiating circumstances in the judgment of the Division Bench nor any infirmities in the process of reasoning or gross unreasonableness and absurdities in the conclusions arrived at to restore the award, so as to justify and warrant our interference in the matter".*** Infrastructural facilities like premises, furniture, utensils, electricity, cost of fuel and also subsidy for using the canteen and the funds for running the same were provided by the employer. Promoters of the co-operative canteen were actually the servicing employees of the bank. They only as promoters of the canteen employed staff of the canteen. The Court decided on this facts in the manner as mentioned above that the staff of the canteen should be treated as the employees of the appellant bank. At the same time the same as iterated the principle relating to the scope of judicial review.

14. The further case referred to on behalf of the said respondents is of **Chennai Port Trust Vs. Chennai Port Trust Industrial Employees Canteen Workers Welfare Association reported in AIR 2018 SC 2272**.

The port trust exercises the administrative control over the canteen. The Court held that the workmen of canteen were the workman of management of port trust and thus entitled to regularisation with all benefits as that of employees of port trust.

15. Another judgment of ***State of Karnataka & Anr. vs. N. Gangaraj reported in AIR 2020 SC 1878,*** has been referred to by the said respondents to highlight the point that once the evidence has been accepted by the fact finding authority that the departmental authority or Tribunal, the High Court in exercise of power of judicial review cannot interfere with the finding of facts recorded by re-appreciating evidence as if it was an appellate authority. Unless the orders passed by the fact finding authorities suffer from patent illegality, those are not liable to set aside only for the reason that an alternative view can also be taken on the similar set of facts.

16. We would like to refer our finding starting from the point of scope of judicial review. The scope for this appeal Court to traverse the evidence on record would be very limited and only would be contingent and subjected to a finding that the process of appreciation of the same has suffered gross error or perversity leading to error in judgment. Necessary guidance in this regard may be sought for from the decision of the Hon'ble Supreme Court in case of ***N. Gangaraj*** (supra). The Supreme Court has observed that judicial review is review of the process of decision making, it's manner. Judicial review is not an appeal in disguise. Therefore, not at every drop of a hat the Court would interfere while exercising power of judicial review unless any gross illegality and perversity is apparent, emanating from violation of principles of natural justice or statutory non-

compliance, absolute arbitrariness on the part of the decision-making authority to come to any particular conclusion or if vitiable due to consideration of irrelevant factors not on record. The law now being settled in the manner as above, this appeal court will proceed with circumspection in order to adjudicate if at all any interference to the judgment of the Hon'ble Single Judge is warranted.

17. Reference may also be made to another judgment of ***Muzaffar Husain vs. State of U.P. reported in 2022 SCC Online SC 567***, of the Hon'ble Apex Court where the Apex Court in connection with the finding of an enquiry officer in a disciplinary proceeding, has been pleased to hold as follows:-

> ***"8. It is trite to say that the power of judicial review conferred on the constitutional Court is not that of an appellate authority but is confined only to the decision-making process. Interference with the decision of departmental authorities is permissible only if the proceedings were conducted in violation of the principles of natural justice or in contravention of statutory regulations regulating such proceedings or if the decision on the face of it is found to be arbitrary or capricious. The Courts would and should not act as an appellate Court and reassess the evidence led in the domestic enquiry, nor should interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly conducted, and the findings are based on evidence, the adequacy of the evidence or reliability of evidence would not be a ground to interfere with the findings recorded in the departmental enquiries."***

The Hon'ble Apex Court was dealing with a matter of misconduct of a judicial officer. While deciding the matter the Apex Court has referred to the other two judgments of the Hon'ble Apex court on the point, in the manner as follows:

> ***"9. In the High Court Of Judicature At Bombay v. Shashikant S. Patil, this Court held:—***

> ***"The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."***
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> ***10. Again, in the State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, it was observed in para 7 as under:***
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> ***"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."***

18. Therefore this Court is conscious enough to follow the settled law that while reviewing judicially, not the decision by itself but the process of making decision should be the concern and subject matter of the Court, unless palpable illegality or gross

perversity is apparent in the decision itself. As a matter of fact, in the present case the Tribunal being the fact finding authority has applied its mind to the evidence and other materials on record. By doing so, it has come to a define finding. It is a trite law that even if in anybodies opinion the decision of the Tribunal is wrong, the same may not be interfered into, unless based on either no evidence or so palpable in defying the evidence on record or contrary to the settled law, that it could be termed as a perversity. If not so, the Court of equity would not unsettled the decision of the fact finding authority.

19. It is exactly where the case of the appellant rests. The appellant says that the fact finding process has been erroneous and not in terms of the settled law. It has also stated of the fact finding authority to have acted in closed mind by not applying adequate attention to the 'relevant' facts of the case, which would have shown as to how the present respondents nos. 3 to 16 are working in a concern (i.e, 'club'), which is absolutely disassociated with the appellant. They also say that appellant's involvement as to the 'club' where the respondents are working, cannot be termed as the direct and absolute control by them over there, which could have rendered the respondent's rights to claim dissertation from the 'club' management, to the rolls of the appellant board.

20. So far as the fact that the respondents have been engaged in the club during the period from 1989 to 1994 and they have been working uninterruptedly since then, are concerned, those are undisputed in this appeal. It is not a case of the appellant that the respondents have been discharging for all these years a service, which is not permanent in nature. The appellant also does not dispute that the 'club' has no separate entity as an

organisation, but has been controlled in terms of the bylaws created for its operation, by the appellant itself.

21. Though this Court is of the opinion, on the basis of the discussions as above, that there is very minimal scope for it to go into the merits of the case, as in this case the decision of the fact finding authority is not appearing as perverse or based on no evidence. The Court, still, for the ends of justice would discuss as herein below. The moot question appears to be as to whether the 'club' is distinct and separable as an entity, from the appellant or those should be considered as inseparable systems, of which the present respondents are also a part.

22. According to the appellant, those are different entities and the appellants are obliged for enforcement of rights of its employees only, amongst whom the present respondents would not come. Appellant has relied on a sufficient number of judicial pronouncements to fortify its argument that it cannot be said to have an employer-employee relationship with the present respondents. That, unless respondent's rights are flowing from the statute or regulations governing the appellant, they cannot insist for enforcement of any of their rights including that of regularisation, against the appellant.

23. As early as in 2013, the Supreme Court has addressed this issue in the case of ***Balwant Rai Saluja*** (supra), by setting up guidelines to deal with the question of employer-employee relationship. Therefore it would not be a blanket prerogative of the employer to create organisations within the organisation and take a veil of separating them from the principal employer in order to keep them away from the usual applicable service benefits. This would be in contravention of the policies of a

welfare state. Hence in judicial review, the Hon'ble Supreme Court has provided for keeping pace with the formulated guidelines to remove the said veil, if any. The adjudicating bodies are in turn obligated to weigh each and every case against the touchstone of the said guidelines to come to a just and proper finding.

24. The guidelines in ***Saluja's case*** (supra) would be considered as fulfilled through the material facts as would be transpiring in the evidence before the trial Court. For this the appellant has taken this court to the various parts of evidence including documents produced. It has been an endeavour on part of the appellant to show that on the basis of the records the relevant questions would only be answered to negate the claim of the present respondents for regularisation under the appellant.

25. A concept of 'remote control' vis-à-vis 'direct control' has been flagged of, in the judgment in ***National Aluminium Company Limited's case*** (supra). Similarly the concept of 'lifting the veil' has been discussed in ***Saluja's*** case (supra)**.**

As envisaged by the Hon'ble Supreme Court from time to time, through various judicial pronouncements, there are certain determining factors, upon determination of which the corporate veil will be lifted and the control of one over the other would become cognizable. A logical factual contrivance should be of 'direct control' being exercised by the dominant object. The Hon'ble Supreme Court has narrated the relevant factors at 'para 65' in the ***Saluja's*** case (supra)**,** though says that the list is not exhaustive. The parameters of day to day management and control would be the mode and manner of management of the dominant object, its status as a separate legal entity, extant of

control exercised by the management or the dominant object in regular affairs like appointment, transfer, promotion, attendance, initiation of disciplinary action, imposition of penalty, source of fund to run the dormant and many more others like these, depending on facts of each case. Continuous total service period, leave policy, salary policy may also be considered as determinants to judge the extent of control exercised.

26. Appellant's case is not based on the foundation of availability of 'no evidence' but on the erroneous appreciation of evidence. Practically the appellant has offered an alternative view, on the basis of the available materials, than what has been decided by the Tribunal. On perusal of the judgment of the Hon'ble Single Judge, it appears that each of the factors have been distingtively discussed therein, which has led to the finding of the Hon'ble Single Judge of the just fair and proper policy under taken by the fact finding Tribunal, while making the decision. Hence, the decision of the fact finding authority have been found not be unsettled by any unwarranted interference.

27. This court has been mindful so far as the documents relied on in this appeal. This court has also made itself familiar with the award delivered by the Tribunal as well as the judgment of the Hon'ble Single Judge, as impugned in this appeal. However, on consideration of the answers regarding the questions of fact in this case, arrived at by the Tribunal and adjudicated upon by the Hon'ble Single Judge, this Court hardly finds any impropriety or error in the manner in which those have been considered. In the process of making decision, the evidence on record has been considered in its right perspective. Hence that would warrant no reconsideration or fresh adjudication. It is not a case of the appellant that it has been denied its right of

hearing or that the fact-finding authority has proceeded arbitrarily or exercised jurisdiction not in accordance to what has been vested to it by law. It is also not the appellant's case that the decision of the fact-finding authority is unreasoned or perverse in any way. That being so, such finding would not be liable to be interfered with.

28. We have already discussed the Apex Court's verdict in ***N. Gangaraj's*** (Supra) case and there are ample numbers of other cases too, which have been decided on the point in the similar way. Therefore finding the decision of the Tribunal as well as the Hon'ble Single Judge not being in absolute hostility with the reasonableness and due consideration of the material and evidence on record and also the settled law, there is no cogent ground found by this Court to interfere into the impugned judgment in any way. That prompts this Court to find that the present appeal should fail.

29. By following the ratio of the judicial pronouncements, as mentioned above, this Court is constrained to hold that being devoid of any merit, this appeal should fail.

30. MAT 989 of 2023 along with CAN 1 of 2023 is dismissed. Judgment of the Hon'ble Single Judge in WPA No. 10637 of 2020 dated 27.3.2023 is affirmed. However there would be no order as to cost. This appeal is disposed of.

31. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

I agree,

(Rai Chattopadhyay, J.) **(V.M Velumani, J.)**